

**REMARKS**

The above referenced patent application has been reviewed in light of the Office Action, dated September 09, 2004, in which:

- claims 9, 19, and 25 are rejected under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph as indefinite;
- and claims 1-37 are rejected under 35 U.S.C. § 102(e) on Swamy (US Patent No. 6,686,759 B1).

Reconsideration of the above referenced patent application in view of the following remarks is respectfully requested.

Claims 1-37 are now pending the above referenced patent application. No claims have been amended, cancelled, or added.

## **1. Drawings**

### ***1.1. Figures 8 & 9***

Applicants noted that Figures 8 & 9 were not properly labeled as prior art and, therefore, did not properly conform with M.P.E.P § 608.02(g). This omission was unintentional and inadvertent. Replacement figures with the proper label have been submitted.

## **2. 35 U.S.C. § 102**

The PTO has rejected claims 1-37 under 35 U.S.C. § 102(e) as being anticipated by Swamy. This rejection by the PTO of these claims is respectfully traversed.

### ***2.1. Remarks of the December 20, 2004 Reply***

Applicants' remarks from the December 20, 2004 reply to the Office Action of September 09, 2004 are incorporated into this reply by reference.

### ***2.2. 37 C.F.R. § 1.131 Declarations***

Applicants can submit an appropriate oath or declaration to overcome a patent, upon which a rejection under 35 U.S.C. §102(e) is based. Applicants can overcome such a patent by showing conception of the invention prior to the effective date of the reference coupled with due diligence from prior to that effective date to the filing of the patent application. 37 C.F.R. §1.131 and MPEP 715.


Accompanying this response are the Declaration of David E. Miner Under 37 C.F.R. §1.131 ("Miner Declaration"), the Declaration of Steven J. Tu Under 37 C.F.R. §1.131 ("Tu Declaration"), and the Declaration of Justin B. Scout Under 37 C.F.R. §1.131 ("Scout Declaration"). Those declarations establish conception of the claimed invention prior to Swamy's November 28, 2000 filing date. In addition, they establish due diligence from prior to that date to the application's filing date.

Because applicants are entitled to a date of invention prior to November 28, 2000, the examiner cannot rely upon Swamy to support a rejection of pending claims 1-37 under 35 U.S.C. §102(e). Consequently, Applicants respectfully request that the PTO withdraw the rejection of those claims based upon that reference.

**CONCLUSION**

In view of the foregoing, it is respectfully asserted that all claims pending in this application, as amended, are in condition for allowance. If the Examiner has any questions, they are invited to contact the undersigned at 503-264-7002. Reconsideration of this patent application and early allowance of all claims is respectfully requested.

Respectfully submitted,

  
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